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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11 In the Matter of:

12 SUSAN KENNEDY and SUSAN P.
13 KENNEDY, INC.

14 Respondents.
15

FPPC Case No. 17/563

STIPULATION, DECISION AND ORDER

16 INTRODUCTION

17 Respondent Susan Kennedy qualified as a lobbyist as the result of attempting to influence
18 commissioners and staff of the California Public Utilities Commission (“CPUC”) from 2012 to 2014.
19 Respondent Susan P. Kennedy, Inc. is Kennedy’s consulting company that received payment for
20 Kennedy’s lobbying services thereby qualifying as a lobbying firm. The Political Reform Act (the
21 “Act”)¹ requires lobbyists and lobbying firms to register with the Office of the Secretary of State
22 (“SOS”) and file quarterly reports. Kennedy and Susan P. Kennedy, Inc. failed to register and failed to
23 file quarterly reports.
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27 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
28 Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in
Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2,
Division 6 of the California Code of Regulations, unless otherwise indicated.

1 **SUMMARY OF THE LAW**

2 All statutory references and discussions of law pertain to the Act’s provisions as they existed in
3 2012 – 2014.

4 Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

5 When enacting the Political Reform Act, the people of California found and declared that
6 previous laws regulating political practices suffered from inadequate enforcement by state and local
7 authorities.² For this reason, the Act is to be construed liberally to accomplish its purposes.³ One purpose
8 of the Act is to prevent improper influence by lobbyists over public officials by regulating the activities
9 of lobbyists and requiring disclosure of their financial activity.⁴ Another stated purpose of the Act is to
10 provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

11 Definition of a Lobbyist

12 A “lobbyist” under the Act, is an individual who receives \$2,000 or more in a calendar month to
13 communicate directly, or through an agent, with state officials for the purpose of influencing legislative
14 or administrative action.⁶ “Administrative action” means the proposal, drafting, development,
15 consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, ratemaking
16 proceeding, or quasi-legislative proceeding.⁷ Specifically in regard to the CPUC, “ratemaking
17 proceeding” means any proceeding before the CPUC in which it is reasonably foreseeable a rate will be
18 established including, general rate cases.⁸

19 For matters before the CPUC, “quasi-legislative proceeding” means any proceeding that involves
20 consideration of the establishment of a policy that will apply generally to a group or class of persons.⁹ It
21 does not include a proceeding to determine the rights or duties of a person under existing laws,
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24 ² § 81001, subd. (h).

25 ³ § 81003.

26 ⁴ §81002, subd. (b).

27 ⁵ § 81002, subd. (f).

28 ⁶ §82039, subd, (a)(1).

⁷ §82002, subd. (a).

⁸ §82002, subd. (b).

⁹ §82002, subd. (c).

1 regulations, or policies.¹⁰ Nor does “quasi-legislative” include a proceeding to enforce compliance with
2 existing law or to impose sanctions for violations of existing law.¹¹

3 Definition of Lobbying Firm

4 A lobbying firm is a business entity, including an individual contract lobbyist, that receives
5 compensation for the purpose of influencing legislative or administrative action on behalf of another
6 person, where any partner, owner, officer or employee of the entity is a lobbyist.¹²

7 Registration

8 A lobbying firm must register with SOS within 10 days of qualifying as a lobbying firm.¹³ The
9 registration includes the name and address of the firm, as well as a list of lobbyists employed by the firm
10 and information about the firm’s clients.¹⁴ The registration must include a certification for each lobbyist
11 at the firm containing information about the lobbyist.¹⁵ A lobbyist also must complete ethics training as
12 part of the certification and registration process.¹⁶

13 Reporting

14 Lobbying firms must file quarterly reports disclosing payments received for lobbying services,
15 the identity and lobbying interests of clients, the firm’s activity expenses, and contributions made by the
16 firm to state elected officials or candidates during the quarter.¹⁷ Additionally, a lobbyist must prepare a
17 lobbying report each quarter that is filed with the lobbying firm’s report. The lobbyist report discloses all
18 activity expenses, and contributions made to a state elected official or candidate by the lobbyist.¹⁸
19 Lobbying firm reports, along with the lobbyist reports, must be filed with SOS during the month
20 following each calendar quarter.¹⁹

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23 ¹⁰ Reg. §18202, subd. (a)(1).

24 ¹¹ Reg. §18202, subd. (a)(3).

25 ¹² §82038.5, subd, (a).

26 ¹³ §§86100 and 86101.

27 ¹⁴ §86104.

28 ¹⁵ §86103.

¹⁶ §86103, subd. (d).

¹⁷ §86114.

¹⁸ §86113.

¹⁹ §86117.

1 **SUMMARY OF THE FACTS**

2 Kennedy served as a CPUC Commissioner from 2003 to 2006. She then served as Chief of Staff
3 to Governor Schwarzenegger from 2007 to 2011. She then worked as a consultant for various clients with
4 business before the CPUC, as well as other state and Federal agencies, while she was establishing a new
5 energy storage business. She is the sole owner of Susan P. Kennedy, Inc. According to Kennedy, she has
6 worked full-time at her energy storage business since 2014 and is no longer acting as a paid consultant.

7 Lyft

8 On November 1, 2012, Lyft, Inc. contracted with Kennedy to provide consulting services
9 involving the coordination and strategic management of Lyft’s public policy interests. Specifically,
10 Kennedy was to provide consulting services. The contract was for one year and paid Kennedy \$15,000
11 per month. It was subsequently extended beyond the original contract term.

12 At the time of the contract, Lyft, along with similar companies including UberX and Sidecar,
13 were under scrutiny from the CPUC, which regulates transportation providers such as limousines and
14 airport shuttles. Lyft and the other companies – known in the industry as Transportation Network
15 Companies, or TNCs – began operating in California in mid- 2012. On August 23, 2012, the CPUC sent
16 Lyft a cease-and-desist letter ordering it to cease operations because it had not received operating
17 authority from the CPUC. In November of 2012, Lyft agreed to pay a fine of \$20,000 for operating
18 without CPUC authority, as did other TNCs.

19 After being retained by Lyft, Kennedy contacted CPUC President²⁰ Michael Peevey, Executive
20 Director Paul Clanon, and other CPUC staff to convince them the CPUC should work with the TNCs, not
21 shut them down. She advocated for the CPUC to undertake rulemaking specific to TNCs. Consequently,
22 in December of 2012, the CPUC instituted a rulemaking proceeding regarding TNCs. (CPUC #R12-12-
23 011.) The proceeding sought primarily to identify public safety issues involving TNCs and adopt
24 regulations to address those concerns. Over the next nine months, the CPUC received comments on the
25 TNC rulemaking and conducted public forums with the interested parties. In September of 2013, the
26 CPUC issued a “Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New
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²⁰ All titles refer to the person’s position at the period of time being discussed, unless otherwise indicated.

1 Entrants to the Transportation Industry” (CPUC # D13-09-0450) (the “TNCs Decision”). The TNCs
2 Decision reiterated that TNCs were subject to the jurisdiction of the CPUC but at the same time
3 acknowledged they were unique and that existing regulations for other types of passenger carriers were
4 not sufficient. The TNC Decision adopted rules and regulations applicable to TNCs concerning liability
5 insurance, driver licensing and background checks, driver training programs, vehicle inspections, and
6 data reporting by the TNCs, amongst other requirements.

7 During the rulemaking process, Kennedy contacted various CPUC officials on behalf of Lyft to
8 influence the nature of the rules and regulations. The efforts of Kennedy and Lyft were successful as the
9 resulting rules and regulations adopted many of the suggestions and positions put forward by Kennedy
10 and Lyft during the rulemaking process.

11 Despite her efforts to influence CPUC officials on the TNC regulations, Kennedy did not register
12 as a lobbyist or lobbying firm, and did not file quarterly reports during the periods in which she sought to
13 influence CPUC officials on behalf of Lyft. Lyft also did not file quarterly lobbyist employer reports
14 during this time. Kennedy’s duties as described in her contract with Lyft did not include lobbying, but
15 her contacts with CPUC officials regarding the TNC rulemaking process qualified her as a lobbyist.

16 San Gabriel Valley Water Company

17 The San Gabriel Valley Water Company (“San Gabriel”) is an investor-owned public utility water
18 company regulated by the CPUC. San Gabriel contracted with Kennedy in December 2013 for consulting
19 services on governmental regulatory, legislative, and public affairs matters. San Gabriel paid Kennedy
20 \$25,000 per month for her services. At the time, San Gabriel had a general rate case pending with the
21 CPUC (Application # 11-07-005) (hereafter the “general rate case”) Sand Hill treatment plant. San
22 Gabriel was seeking to increase water rates for customers in the City of Fontana as well as recover costs
23 related to its Sand Hill treatment plant. The City of Fontana and Fontana School District objected to the
24 proposed rate increases. According to Kennedy, San Gabriel primarily sought her guidance and strategy
25 related to the Sandhill Treatment plant issue.

26 During the first half of 2014, Kennedy had meetings with Peevey and his staff, and Commissioner
27 Michael Picker and his staff, regarding issues related to the San Gabriel general rate case. During these
28 meetings, and through emails, Kennedy sought to influence the CPUC’s decision on cost recovery for the

Sand Hill treatment plan in the general rate case. On May 8, 2014, the CPUC issued a decision siding with the City of Fontana and Fontana School District regarding the proposed rate increases (Decision # 14-05-001) and denying rate recovery for the Sand Hill treatment plant, amongst other issues. The CPUC's decision invalidated much of a settlement San Gabriel had with the CPUC's Office of Ratepayer Advocate. Subsequently, the CPUC issued a decision on November 24, 2015 containing a modified rate increase agreed upon by all parties (Decision # 15-11-028). Kennedy's communications with CPUC officials during the first two quarters of 2014 on behalf of San Gabriel qualified as lobbying. At the time, neither Kennedy nor Susan P. Kennedy, Inc. were registered to lobby and they did not file quarterly reports. San Gabriel did file quarterly lobbyist employer reports during these two quarters. The reports disclosed payments to another lobbying firm for lobbying the CPUC on San Gabriel's behalf, but the reports did not disclose the payments to Susan P. Kennedy, Inc.

Registration and Reporting

Kennedy acknowledges through this stipulation her contacts with CPUC officials on behalf of Lyft and San Gabriel qualified her as a lobbyist, and Susan P. Kennedy, Inc. as a lobbying firm for the 4th quarter of 2012 through the 2nd quarter of 2014. In conjunction with this settlement, Kennedy has registered Susan P. Kennedy, Inc. as a lobbying firm and herself as a lobbyist. She has also filed quarterly lobbying firm reports and lobbyist reports disclosing the lobbying activity. The following table summarizes the content of those reports.

Report Period	Client(s)	Client(s) Interest(s)	Payments Received
10/1/12 – 12/31/12	Lyft	CPUC Rule 12-12-011	\$40,500
1/1/13 – 3/31/13	Lyft	CPUC Rule 12-12-011	\$31,500
4/1/13 – 6/30/13	Lyft	CPUC Rule 12-12-011	\$900
7/1/13 – 9/30/13	Lyft	CPUC Rule 12-12-011 and Decision 13-09-045	\$900
10/1/13 – 12/31/13	Lyft	CPUC Decision 13-09-045	\$900
1/1/14 – 3/31/14	Lyft San Gabriel	Lyft: CPUC Decisions 13-09-045 and 14-04-022 San Gabriel: CPUC Application 11-07-005	Lyft: \$900 San Gabriel: \$75,000
4/1/14 – 6/30/14	Lyft San Gabriel	Lyft: CPUC Decisions 13-09-045 and 14-04-022 San Gabriel: CPUC Application 11-07-005	Lyft: \$900 San Gabriel: \$50,000
Total:			\$201,500

1 **VIOLATIONS**

2 Count 1: Failure to timely register lobbying firm and file lobbyist certification

3 Kennedy and Susan P. Kennedy, Inc. failed to timely register Susan P. Kennedy, Inc. as a
4 lobbying firm and failed to complete a lobbyist certification for Kennedy, in violation of sections 86100
5 and 86101.

6 Counts 2 – 8: Failure to timely file lobbying firm and lobbyist reports

7 Kennedy and Susan P. Kennedy, Inc. failed to timely file quarterly lobbyist and lobbying firm
8 reports for seven calendar quarters, in violation of sections 86113, 86114, and 86117.

9 **PROPOSED PENALTY**

10 This matter consists of eight counts of violating the Act, which carries a maximum administrative
11 penalty of \$5,000 per count and \$40,000 total.

12 In determining the appropriate penalty for a particular violation of the Act, the Commission
13 considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis
14 on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and
15 circumstances of the violation in context of the factors set forth in regulation 18361.5, subdivision (d): 1)
16 the seriousness of the violations; 2) the presence or lack of intent to conceal, deceive or mislead the
17 voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the
18 respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern
19 of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided
20 amendments to provide full disclosure.

21 In this case, the violations were serious since the public and other interested parties were not
22 informed of Kennedy’s lobbying activity. Further, since Kennedy did not complete the certification
23 required of lobbyists, the Act’s requirements of publishing a lobbyist’s name, address, and picture, and
24 ethics training, did not occur. While Kennedy maintains she did not intend to qualify as a lobbyist, given
25 her experience and sophistication, she should have been aware at the time that her activity qualified as
26 lobbying. In conjunction with this settlement, Kennedy filed delinquent reports to disclose her lobbying
27 activities. But the value of these disclosures is limited considering they occurred well after the
28 administrative actions lobbied. According to Kennedy, she is no longer acting as a paid consultant and

1 does not intend to resume such work.

2 In determining whether a proposed penalty is appropriate, the Commission also considers
3 penalties it has approved in similar cases. *In the Matter of California Strategies, LLC, Jason Kinney,*
4 *Rusty Areias, and Winston Hickox* (FPPC #11/850) (“*California Strategies*”) concerned three
5 experienced political consultants who qualified as lobbyists by attempting to influence government
6 officials on behalf of their clients. The three lobbyists and their employer failed to register and failed to
7 file quarterly reports in 2012 and a portion of 2013 despite California Strategies, LLC receiving
8 approximately \$67,500 during 2012 from clients for lobbying services provided by the three lobbyists.
9 It’s not clear from the filings how much California Strategies, LLC received in 2013. The Commission
10 approved a settlement on September 19, 2013. The settlement imposed a \$4,500 penalty on each of the
11 three individuals for failing to register as lobbyists, and on California Strategies, LLC for failing to
12 register as a lobbying firm. The settlement also included penalties of \$3,000 per count against each
13 respondent for failing to file quarterly reports. Each count covered one calendar year of reports.

14 The nature of the violations in this case are similar to those in *California Strategies*. However,
15 the counts are organized in a different manner, with Kennedy and Susan P. Kennedy, Inc. charged
16 together on each count because Kennedy is the sole owner of Susan P. Kennedy, Inc. and its only
17 lobbyist, whereas *California Strategies* involved a larger business and multiple lobbyists. On the
18 violations for failure to file quarterly reports, more counts are proposed in this case due to the level of
19 activity compared to *California Strategies*. Also, a higher penalty per count is proposed because
20 Kennedy is highly sophisticated and, given the extent of her communications with officials, should have
21 been aware at the time her actions qualified as lobbying.

22 Therefore, the following administrative penalty is recommended: Count 1: \$4,500; and Counts 2
23 – 8: \$4,000 per count; for a total of \$32,500.

24 CONCLUSION

25 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
26 respondents Susan Kennedy and Susan P. Kennedy, Inc. hereby agree as follows:

27 1. Respondents violated the Act as described in the foregoing pages, which are a true and
28 accurate summary of the facts in this matter.

1 2. This stipulation will be submitted for consideration by the Fair Political Practices
2 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

3 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
4 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
5 liability of respondent pursuant to Section 83116.

6 4. Respondents have consulted with their attorney, James Harrison of Remcho Johansen &
7 Purcell, LLP, and understand, and hereby knowingly and voluntarily waive, any and all procedural rights
8 set forth in sections 83115.5, 11503, 11523, and regulations 18361.1 through 18361.9. This includes, but
9 is not limited to the right to appear personally at any administrative hearing held in this matter, to be
10 represented by an attorney at respondents’ own expense, to confront and cross-examine all witnesses
11 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
12 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
13 reviewed.

14 5. Respondents agree to the issuance of the decision and order set forth below. Also,
15 Respondents agree to the Commission imposing an administrative penalty in the amount of \$32,500. One
16 or more cashier’s checks or money orders totaling said amount—to be paid to the General Fund of the
17 State of California—is/are submitted with this stipulation as full payment of the administrative penalty
18 described above, and same shall be held by the State of California until the Commission issues its
19 decision and order regarding this matter.

20 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
21 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
22 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
23 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
24 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
25 Director, shall be disqualified because of prior consideration of this Stipulation.

1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
3 or as a PDF email attachment is as effective and binding as the original.
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5 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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8 Dated: _____

Susan Kennedy, individually and on behalf of Susan P.
Kennedy, Inc.

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13 The foregoing stipulation of the parties "In the Matter of Susan Kennedy and Susan P. Kennedy, Inc.,"
14 FPPC Case No. 17/563 is hereby accepted as the final decision and order of the Fair Political Practices
15 Commission, effective upon execution below by the Chair.
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17 IT IS SO ORDERED.
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19 Dated: _____

Joann Remke, Chair
Fair Political Practices Commission